

### NOVATION AND AMENDMENT

It is hereby agreed by and among the **State of Vermont, Department of Vermont Health Access** (hereinafter "State"), **Goold Health Systems, Inc.**, a corporation, and **Change Healthcare Pharmacy Solutions, Inc.**, a corporation (hereinafter "Contractor"), that the contract on the subject of services for the Vermont Health Services Enterprise Pharmacy Benefit Manager, effective May 1, 2014, is hereby amended effective June 30, 2017 as follows:

1. **Novation.** It is hereby agreed by and among the State of Vermont, Department of Vermont Health Access (hereinafter called "State"), Goold Health Systems, Inc., a corporation with a principal place of business in Augusta, Maine (hereinafter called "Original Contractor"), and Change Healthcare Pharmacy Solutions, Inc., a corporation with a principal place of business in Augusta, Maine (hereinafter called "Contractor"), that the Contractor intends to assume all of the rights, benefits, duties and obligations of Original Contractor under the Contract between the State and Goold Health Systems, Inc. dated as of May 1, 2014, Contract #26324, as amended to date (the "Contract"), and that the Contract is hereby amended as follows:

- I. **Novation.** The State and Goold Health Systems, Inc. hereby effect the novation of the Contract (the "Novation") to substitute the Contractor for Goold Health Systems, Inc. for all purposes of the Contract. The State hereby consents to such Novation and hereby releases Goold Health Systems, Inc. from all of its duties and obligations under the Contract following the effective date of this Novation and Amendment, and Contractor hereby accepts the Novation and assumes all rights, benefits, duties, undertakings, liabilities and obligations of Goold Health Systems, Inc. under the Contract.

Goold Health Systems, Inc. hereby releases the State from its undertakings, obligations, duties and liabilities against Goold Health Systems, Inc. under the Contract following as of the effective date of this Novation.

- II. **Amendment.** The Contract is hereby amended to replace all references in the Contract to Goold Health Systems, Inc. with references to Change Healthcare Pharmacy Solutions, Inc.
- III. **Effective Date.** The effective date of this Novation and Amendment shall be June 30, 2017.
- IV. **Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this Novation and Amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.
- V. **Child Support** (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

- VI. Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this Novation and Amendment is signed, neither the Contractor nor the Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date that this Novation and Amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at:  
<http://bgs.vermont.gov/purchasing-contracting/debarment>

Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

For State administrative purposes, upon signing of this Novation and Amendment, the contract number will be changed to No. 34056.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Novation and amendment to the Contract.

2. **By deleting Number 3 (Maximum Amount) on page 1 of 150 of the base agreement and substituting in lieu thereof the following:**

Maximum Amount. In consideration of the services to be performed by the Contractor, the State agrees to pay the Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$18,283,799.20.

3. **By deleting Number 4 (Contract Term) on page 1 of 150 of the base agreement and substituting in lieu thereof the following:**

Contract Term. The period of the Contractor's performance shall begin on May 1, 2014 and end on December 31, 2018. This contract may be extended for one (1) additional one-year term.

4. **By deleting Number 7 (Cancellation) on page 1 of 150 of the base agreement and substituting in lieu thereof the following:**

7. Cancellation. This contract may be terminated by either party for non-cause. A non-cause termination may occur provided one hundred eighty (180) days' notice is provided to the other party pursuant to paragraph 8 below. The contract may also be terminated for cause. In this case, either party may terminate the Contract as a consequence of default, as described in Attachment D. The Contract may be terminated by the State immediately in the event that federal funding is withdrawn from the State. In the event of termination for withdrawal of federal funding, the Contractor shall be paid for work completed up to the date at which federal funds are no longer available. Under no circumstances does termination of this Contract waive the Contractor's obligations regarding turnover, close-out, data privacy and security, return of data, and related matters unless waived in writing by the State.

5. By deleting Number 8 (Notice of Contract Action) on page 1 of 150 of the base agreement and substituting in lieu thereof the following:

THE CONTACTS FOR THIS AWARD ARE AS FOLLOWS:

	<u>State Fiscal Manager</u>	<u>State Authorized Representative</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley Contract Administrator	Nancy Hogue Director of Pharmacy Services	Dan Hardin Account Executive
Phone #:	802-871-3302	802-241-0143	630-300-4407
E-mail:	<a href="mailto:Meaghan.Kelley@vermont.gov">Meaghan.Kelley@vermont.gov</a>	<a href="mailto:Nancy.Hogue@vermont.gov">Nancy.Hogue@vermont.gov</a>	<a href="mailto:dhardin@changehealthcare.com">dhardin@changehealthcare.com</a>

#### NOTICES TO THE PARTIES UNDER THIS AGREEMENT

To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

	STATE REPRESENTATIVE	CONTRACTOR
Name	DVHA Legal	Dan Hardin
Address	280 State Drive, NOB 1 South Waterbury, VT 05671-1010	45 Commerce Drive, Suite 5 Augusta, ME 04332
Email	<a href="mailto:DVHA.Legal@vermont.gov">DVHA.Legal@vermont.gov</a>	<a href="mailto:dhardin@changehealthcare.com">dhardin@changehealthcare.com</a>

The parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph.

#### DVHA MONITORING OF CONTRACT

The parties agree that the DVHA official State Authorized Representative is primarily responsible for the review of invoices presented by the Contractor. The State Authorized Representative is Nancy Hogue: [Nancy.Hogue@vermont.gov](mailto:Nancy.Hogue@vermont.gov) or if unavailable, designee, Jennifer Egelhof: [Jennifer.Egelhof@vermont.gov](mailto:Jennifer.Egelhof@vermont.gov). The State Fiscal Manager is primarily responsible for receiving invoices from the Contractor and processing the invoices for payment upon approval by the State Authorized Representative. The State Fiscal Manager is Meaghan Kelley: [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov).

6. By deleting subsection I.I.i.2 from Coordination of Benefits (COB) Edits in Attachment A, on page 5 of 150 of the base agreement, and substituting in lieu thereof the following subsection I.I.i.2:

2. Utilizing the State's Third Party Liability (TPL) data and eligibility records, and third party data according to the terms of Section I Supplemental, to ensure that all payment opportunities are exhausted.

7. By adding the following subsection "I.1 Supplemental to External Coordination of Benefits (eCOB) for Pharmacy Claims" to page 5 of 150 of the base agreement's Attachment A, inserted below section "I. Point of Sale Pharmacy Claims Processing System":

I.1 Supplemental to External Coordination of Benefits (eCOB) for Pharmacy Claims

Effective January 1, 2015 the State and the Contractor agree to the following terms and conditions related to the Contractor's provision of external third-party enrollment data to supplement the State's internal third-party liability (TPL) Member records.

- a. The Contractor will adhere to the terms of this subsection I-Supplemental when using third party data as described in subsection I.I.i.2 above.
- b. The Contractor's use of third party data will be referred to as External Coordination of Benefits, herein after referred to as "eCOB" or "eCOB Services".
- c. The Contractor will establish procedures to ensure that eCOB services are provided with respect to a claim only after ensuring that all TPL data supplied by the State has been exhausted.
- d. The Contractor shall search national databases to obtain current information regarding Members' other pharmacy benefit insurance coverage and shall create a TPL file (herein after called the "Contractor's eCOB File"). The Contractor will provide files containing new eligibility on a weekly and monthly basis to the State.
- e. The Contractor will validate pharmacy claims to determine whether there is a liable third party other than the State. In situations where other insurance coverage is detected for the date of service, the claim will be denied and a TPL message will be generated in the system. The message will prompt the Provider to process the pharmacy claim through the other existing third-party coverage prior to processing the pharmacy claim through the State.
- f. Claims Denial and Messaging: The following information shall be included in the Point-of-Sale Processing System (POS) messaging, when available:
  1. Bank Identification Number (BIN);
  2. Processor Control Number (PCN);
  3. Group Number;
  4. Cardholder ID; and
  5. Helpdesk Phone Number, customized for the applicable payer where the pharmacy claim should be sent.The system shall allow the Pharmacy Help Desk, managed by the Contractor, to override the TPL edit in accordance with State policies.
- g. If the State supplies TPL data that is different from the data in the Contractor's eCOB File, the Contractor shall not modify such State TPL data, and the State's TPL data will be utilized before the Contractor's eCOB Data during claims processing.
- h. The Contractor will deactivate and not include the following pharmacy benefit insurance covered, or other identified coverage, in its eCOB File:
  1. Medicare Part D or C;
  2. Any entity which the State has identified, or the Contractor can reasonably ascertain, to be a discount card or other non-insurance entity; and
  3. Any entity which the State has requested to be excluded from eCOB activities prior to the avoided claim.
- i. Reporting: The Contractor shall provide the State with a monthly invoice and a monthly report that includes, but is not limited to, the following information:
  1. The number and dollar amount of pharmacy claims denied that returned the Contractor-identified primary insurance billing information;

2. The number of pharmacy claims identified that went on to be paid (either in part or in full) by the State;
  3. The final amount paid on such pharmacy claims;
  4. The number of pharmacy claims processed with each type of other coverage code (OCC) or Point of Sale override;
  5. For each denied claim, Unique ID, and associated reject code; and
  6. Cost Avoidance Savings: The difference between what the State would have paid, if not for the presence of the eCOB data, and what the State actually paid as the payer of last resort.
- j. Historical Record: The Contractor agrees to retain all historical eCOB data within the POS to support all inquiries by the State and to substantiate the invoice for Cost Avoidance Savings. The eCOB data must include the eCOB effective date, end date and date of TPL load. This data must remain available to the State for the term of this Agreement.
- k. Requirements for verified cost avoided transactions: The Contractor shall be eligible for reimbursement for eCOB services for each claim for which it can demonstrate with sufficient claim-level detail that:
1. The Contractor's eCOB file was used to identify third party coverage;
  2. The coverage was not included in the State's TPL file on or before the day it was included in the Contractor's eCOB file;
  3. The claim was not resubmitted to Medicaid within 30 days of the eCOB denial or a substantial portion of the claim was paid by a third party; and
  4. All other terms of this subsection I.1 have been met.

**8. By deleting subsection II.a (Provider Call Center) from Attachment A, beginning on page 5 of 150 of the base agreement, and substituting in lieu thereof the following subsection II.a.:**

**a. Provider Call Center**

The Contractor must implement, staff, and operate a call center (e.g., help desk), available 24 hours a day, during every day of the year, including all holidays, to support all pharmacies and prescribers enrolled in Vermont's pharmacy benefits programs. The call center solution must be staffed by the Contractor with employees hired specifically to support the State of Vermont, and must be located in Vermont within 30 miles of the State's pharmacy staff offices. The Contractor must be the first point of contact for pharmacy and medical providers with questions, concerns, and complaints and must implement and maintain a provider contact and problem-resolution tracking system. The call center solution must be fully-supported by a phone system, including automated call routing, and interactive voice response. In addition, the solution must be supported by a technical call management application, to facilitate logging, tracking, and resolution of all calls and issues in addition to facilitating performance monitoring of call center activities. Core features of the call management application must include workflow process and queue management. The system must be capable of scalability to accommodate variability in call volumes, and must be capable of handling peak call volumes.

The call center must assist pharmacies with claims-processing issues, drug-coverage questions, and all other inquiries and issues. The call center must accept and process requests for prior authorization from providers that cannot be managed through the automated POS-PA system, in addition to answering any other inquiries from providers

(for example, PA status inquiries and drug coverage questions). The call center system must, at a minimum, document and track contacts with providers, identify issues, and describe problem resolution. The Contractor must review the data submitted by providers, obtain any corroborating information, and prepare an analysis of the issues. The analyses must be reviewed with Statestaff at regularly scheduled meetings.

9. By deleting subsection 3.a from subsection V.A (Operational Requirements) in Attachment A, on page 34 of 150 of the base agreement, and substituting in lieu thereof the following subsection 3.a:
  - a. Operating facilities and housing daily operational staff as defined in the Staffing Plan within Vermont, within 30 miles to DHVA offices;
10. By deleting Attachment B (Payment Provisions), beginning on page 101 of 150 of the base agreement, and substituting in lieu thereof Attachment B beginning on page 7 of 48 of this Novation and Amendment.
11. By deleting Attachment C (Customary Provisions for Contracts and Grants), beginning on page 109 of 150 of the base agreement, and substituting in lieu thereof Attachment C beginning on page 17 of 48 of this Novation and Amendment.
12. By deleting Attachment D (Other Provisions), beginning on page 113 of 150 of the base agreement, and substituting in lieu thereof Attachment D beginning on page 24 of 48 of this Novation and Amendment.
13. By deleting Attachment E (Business Associate Agreement), beginning on page 123 of 150 of the base agreement, and substituting in lieu thereof Attachment E beginning on page 35 of 48 of this Novation and Amendment.
14. By deleting Attachment F (Agency of Human Services' Customary Contract Provisions), beginning on page 130 of 150 of the base agreement, and substituting in lieu thereof Attachment F beginning on page 43 of 48 of this Novation and Amendment.

This amendment consists of 48 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#26324, changed to #34056 by this Novation and Amendment) effective May 1, 2014, shall remain unchanged and in full force and effect.

STATE OF VERMONT  
DEPARTMENT OF VERMONT  
HEALTH ACCESS

ORIGINAL CONTRACTOR  
GOULD HEALTH SYSTEMS, INC.

CONTRACTOR  
CHANGE HEALTHCARE PHARMACY  
SOLUTIONS, INC.

CORY GUSTAFSON, COMMISSIONER  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0239  
Email: [Cory.Gustafson@vermont.gov](mailto:Cory.Gustafson@vermont.gov)

DATE DENISE CEULE  
3055 Lebanon Pike  
Nashville, TN 37214  
Phone: 615-932-3000  
Email: [contracts@ghsinc.com](mailto:contracts@ghsinc.com)

DATE DENISE CEULE  
3055 Lebanon Pike  
Nashville, TN 37214  
Phone: 615-932-3000  
Email: [contracts@ghsinc.com](mailto:contracts@ghsinc.com)



**ATTACHMENT B  
 PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed and/or delivered as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, and payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specify particular payment terms:

1. Contract Maximum. The total maximum amount payable under this contract shall not exceed \$18,283,799.20. This is inclusive of the base agreement maximum amount of \$12,926,788.55, plus Year 4 Operational costs of \$4,047,474.65 and Year 3 e-COB costs of \$1,309,536. All rates set forth in this contract are all-inclusive. No expenses, benefits, or insurance will be deemed reimbursable to the Contractor by the State under this Contract.

2. Table B-1: Total Cost Summary

Description	Total One-time Costs	Year 1	Year 2	Year 3	Year 4	Total Ongoing Costs	Total Costs
Implementation / Configuration	\$1,918,775.75	-	-	-	-	-	\$1,918,775.75
Contingency (Budget for Unanticipated Tasks)	\$110,047.50	\$113,348.90	\$116,749.39	\$120,251.87	-	\$350,350.16	\$460,397.66
Total DDI	<b>\$2,028,823.25</b>	<b>\$113,348.90</b>	<b>\$116,749.39</b>	<b>\$120,251.87</b>	-	<b>\$350,350.16</b>	<b>\$2,379,173.41</b>
Claims Processing and Operational Support	-	\$1,243,053.84	\$1,289,683.30	\$1,252,778.58	\$1,219,894.73	\$5,005,410.45	\$5,005,410.45
Clinical Program Management and Support	-	\$1,103,679.76	\$1,146,248.42	\$1,104,065.24	\$1,065,810.74	\$4,419,804.16	\$4,419,804.16
Financial Support Services	-	\$689,329.80	\$715,973.94	\$689,169.76	\$664,836.77	\$2,759,310.27	\$2,759,310.27
Medication Therapy Management Program-Medicaid	-	\$425,000.00	\$437,750.00	\$400,000.00	\$464,408.98	\$1,727,158.98	\$1,727,158.98
M&O Contingency				\$50,882.50	\$123,859.43	\$174,741.93	\$174,741.93

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 Table B-1 Continued...

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eCOB Costs 1/1/15 – 6/30/17 \$35.30 per avoided claim, not to exceed 30,000 claims (paid out in Year 3)				\$1,059,000		\$1,059,000	\$1,059,000
eCOB costs 7/1/17 – 12/31/18 \$37.96 per avoided claim, not to exceed 20,000 claims				\$250,536	\$508,664	\$759,200	\$759,200
Total O&M	-	\$3,461,063.40	\$3,589,655.66	\$4,806,432.08	\$4,047,474.65	\$15,904,625.79	\$15,904,625.79
<b>Total Costs including One-time Costs and Ongoing Costs</b>	<b>\$2,028,823.25</b>	<b>\$3,574,412.30</b>	<b>\$3,706,405.05</b>	<b>\$4,926,683.95</b>	<b>\$4,047,474.65</b>	<b>\$16,254,975.95</b>	<b>\$18,283,799.20</b>

3. In the event the State elects to pursue option year 5 of this contract, the Contractor agrees to the prices for its work indicated in its bid to the State as follows:

Table B-2: Optional Year 5 Costs

Description	Year 5
Contingency (Budget for Unanticipated Tasks)	\$127,575.21
Claims Processing and Operational Support	\$1,340,778.30
Clinical Program Management and Support	\$1,183,159.35
Financial Support Services	\$738,616.62
Medication Therapy Management Program-Medicaid	\$478,341.25
eCOB Services	\$650,000.00
<b>Total Costs</b>	<b>\$4,518,470.73</b>

4. Work performed under the contingency line item called out in Table B-1 shall not exceed \$635,139.59. The contingency line item shall be billed by Customer Service (CSRs) hour as requested by the State, and will be billed per hour as utilized. As of May 1, 2014, the base rate for CSR hours is \$108.25. Effective January 1, 2015, the hourly rate for billable project CSR hours will be increased from the 2014 base rate of \$108.25 per hour at the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) inflation rate and the per hour State reimbursement for any hours remaining at the termination of the contract will also be increased at the CPI-W inflation rate. CSR hours are not expended for new project proposal development as indicated below. The Contractor agrees to provide the following number of CSRs hours to the State:

Between May 1, 2014 and December 31, 2014, the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2015 and December 31, 2015, the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2016 and December 31, 2016, the Contractor shall allow the State up to 1,017 CSR Hrs.



Between January 1, 2017 and December 31, 2017, the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2018 and December 31, 2018, the Contractor shall allow the State up to 1,017 CSR Hrs.

The State may initiate the CSR process leading to a new project need by requesting a proposal from the Contractor. The request shall be prepared by the State and will include the following:

- i. Project Contact
- ii. Type of Activity
- iii. Project Goal(s)
- iv. Brief Description of Project
- v. Project Deliverable(s)
- vi. Estimated Project Duration/Phasing
- vii. Description of Expected Timeline of Project

Upon the State's consideration of the proposal, the State shall then complete the Task Order Form (Attachment G). Both parties have the right to submit modifications or deny any Task Order submitted by the either party. The final Task Order document shall receive approval by the State, and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office prior to engagement in the outline work. Each Task Order must be approved before any work shall begin. The State will not pay for services that are not previously approved in a Task Order by both authorized representatives listed within this section. The State Authorized Representative and the DVHA Business Office have final authority over whether a Task Order is initiated under this contract. Changes to a Task Order shall be accomplished by written modification as agreed to by both parties listed below and will be reflected in a new Task Order. Task Orders must be approved by both individuals listed below:

Meaghan Kelley: [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov)  
Nancy Hogue: [Nancy.Hogue@vermont.gov](mailto:Nancy.Hogue@vermont.gov)

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Task Order document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them.

Any unused CSR hours may be carried over to the following year. State will have the option to purchase additional CSR allocations annually in minimum block of 500 per year at a rate of \$98.25/hour through December 31, 2018. Any purchase of additional blocks of hours will be reduced to writing and incorporated into a signed amendment to this contract.

5. Table B-3 outlines the details for payment for the DDI phase (\$1,918,775.75) and a contingency amount (\$110,047.50)/

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Table B-3 DDI Milestones

PROJECT MILESTONES	PHASE	% DUE AT COMPLETION	EST. COMPLETION DATE	DOLLAR VALUE OF MILESTONE PAYMENT
<b>Project Initiation Activities</b> Deliverable 1 — Project Kick-off Presentation Deliverable 2 — Project Management Plan Deliverable 3 — Project Work Plan and Schedule Deliverable 4 — Weekly Project Status Reports Established	Combined	5%	11/15/2014	\$95,938.79
<b>Requirements Analysis</b> JAD Sessions Complete Deliverable 5 — Requirements methodology and Template Deliverable 6 — Cross-Walk of contract Requirements against Contractor's proposed PBMS Deliverable 7 — Detailed Functional and Non-Functional Requirements Traceability Matrices	Combined	15%	12/15/2014	\$287,816.36
<b>Business and Technical Design</b> Deliverable 8 — Configuration Design Document Deliverable 9 — Data Integration and Interface Design Document	Combined	10%	5/15/2015	\$191,877.57
<b>Conversion Activities</b> Deliverable 10 — Demonstration of successful initial data conversion 1	Combined	10%	4/30/2015	\$191,877.57
<b>Configuration and Development</b> Deliverable 11 — Client Review of Configuration	Phase 1	10%	3/31/2015	\$191,877.57
Deliverable 12 — Unit Testing Results	Phase 2	5%	5/15/2015	\$95,938.79
<b>System Testing</b> Deliverable 13 — Documented System Test Results	Phase 1 Phase 2	5% 5%	3/31/2014 4/30/2015	\$95,938.79 \$95,938.79
<b>Acceptance Testing</b> Deliverable 14 — User Acceptance	Phase 1 Phase 2	5% 5%	3/31/2015 5/15/2015	\$95,938.79 \$95,938.79
<b>Training</b> Deliverable 15 — Training Plan Deliverable 16 — Training Materials	Phase 1	3%	3/31/2015	\$57,563.27
Deliverable 17 — Documented Evidence of Successful End-User Learning	Phase 2	2%	4/30/2015	\$38,375.51
<b>POS Implementation</b>				

1 Completion date assumes receipt of initial data transfer from outgoing PBM Vendor no later than 06/01/2014

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PROJECT MILESTONES	PHASE	% DUE AT COMPLETION	EST. COMPLETION DATE	DOLLAR VALUE OF MILESTONE PAYMENT
Deliverable 18 — Deployment Plan Deliverable 19 — CMS Certification Plan Deliverable 20 — System Documentation Deliverable 21 — Performance SLAs Reporting Tools and pre go live results Deliverable 22 – Final Data Conversion Deliverable 23 — Rollout (Go Live)	Combined	10%	4/30/2015	\$191,877.57
<b>Production Support (Transition to Operations)</b> Deliverable 24 - Post go live support plan Deliverable 25 - Systems Acceptance (punch list completion) Deliverable 27 - Operations and Maintenance Procedure Manuals	Combined	5%	5/15/2015	\$95,938.79
<b>Certification of POS</b> Deliverable 26 - CMS Certification – (letter from CMS)	Combined	5%	7/31/2015	\$95,938.80
<b>SUBTOTAL</b>			<b>100%</b>	<b>\$1,918,775.75</b>
	Contingency for System Implementation and Enhancement		\$ 108.25/hr.	\$110,047.50
Total for DDI				<b>\$2,028,823.25</b>

6. Table B-4 outlines the details for payment for Operations and Maintenance years 1-4 (\$15,729,833.86) and a contingency amount (\$525,092.09).

Table B-4 PBM Operations

Description	Unit of Measure	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Total Ongoing Costs
<b>Claims Processing and Operational Support</b>		<b>\$1,243,053.84</b>	<b>\$1,289,683.30</b>	<b>\$1,252,778.58</b>	<b>\$1,219,894.73</b>	<b>\$5,005,410.45</b>
POS Claims Processing (includes eligibility, adjudication, pricing, FUL, SMAC, 340B, COB, benefit design, Pro-DUR, all other edits, audits, restrictions)*	per month	\$689,329.92	\$715,973.94	\$689,169.76	\$664,836.77	\$2,759,310.39
Provider Support: Provider Portals, Provider Support, Call Center(s)- Technical and	per month	\$389,923.92	\$404,995.36	\$389,833.40	\$376,069.28	\$1,560,821.96

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Description	Unit of Measure	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Total Ongoing Costs
Clinical, Provider Communications						
Electronic Prescribing Support and Interface	per transaction	\$163,800.00	\$168,714.00	\$173,775.42	\$178,988.68	\$685,278.10
<b>Clinical Program Management and Support</b>		<b>\$1,103,679.76</b>	<b>\$1,146,248.42</b>	<b>\$1,104,065.24</b>	<b>\$1,065,810.74</b>	<b>\$4,419,804.16</b>
Prior Authorization - Electronic POS (Drug and Medical Look-Back)	per claim	\$206,798.96	\$214,792.18	\$206,750.93	\$199,451.03	\$827,793.10
Prior Authorization - Manual/Call Center	per claim	\$357,198.20	\$371,004.68	\$357,115.24	\$344,506.33	\$1,429,824.45
Prior Authorization-Electronic Medical Record/Electronic Health Record	per transaction	\$10,500.00	\$10,815.00	\$11,139.45	\$11,473.63	\$43,928.08
State Maximum Allowable Cost Program(SMAC)	per month	\$83,555.16	\$86,784.72	\$83,535.73	\$80,586.28	\$334,461.89
All other Clinical Programs and Services: PDL Management, Utilization Management, Retrospective Drug Utilization Review, DUR Board Support, Appeals Support, Specialty Pharmacy programs, Consultative Support	per month	\$445,627.44	\$462,851.84	\$445,523.89	\$429,793.47	\$1,783,796.64
<b>Financial Support Services</b>		<b>\$689,329.80</b>	<b>\$715,973.94</b>	<b>\$689,169.76</b>	<b>\$664,836.77</b>	<b>\$2,759,310.27</b>
Management of State and Federal rebate programs	per month	\$612,737.64	\$636,421.28	\$612,595.35	\$590,966.04	\$2,452,720.29
Administration and support of Supplemental rebate program	per month	\$41,777.52	\$43,392.36	\$41,767.86	\$40,293.13	\$167,230.88
Analytics and reporting	per month	\$34,814.64	\$36,160.30	\$34,806.55	\$33,577.60	\$139,359.10
<b>Other Services</b>		<b>\$425,000</b>	<b>\$437,750</b>	<b>\$400,000</b>	<b>\$464,408.98</b>	<b>\$3,545,359</b>
Medication Therapy Management Program-Medicaid	Per Member Per Month	\$425,000.00	\$437,750.00	\$400,000.00	\$464,408.98	\$1,727,158.98

Description	Unit of Measure	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Total Ongoing Costs
eCOB Costs 1/1/15 – 6/30/17 \$35.30 per avoided claim, not to exceed 30,000 claims (paid out in Year 3)	Per verified cost avoided transaction	-	-	\$1,059,000		\$1,059,000
eCOB costs 7/1/17 – 12/31/18 \$37.96 per avoided claim, not to exceed 20,000 claims	Per verified cost avoided transaction			\$250,536	\$508,664	\$759,200
<b>Total PBM Operations</b>		<b>\$3,461,063.40</b>	<b>\$3,589,655.66</b>	<b>\$4,755,549.58</b>	<b>\$3,923,615.22</b>	<b>\$15,729,833.86</b>
<b>Total Contingency</b>		<b>\$113,348.90</b>	<b>\$116,749.39</b>	<b>\$171,134.37</b>	<b>\$123,859.43</b>	<b>\$525,092.09</b>
<b>Total Cost</b>		<b>\$3,574,412.30</b>	<b>\$3,706,405.05</b>	<b>\$4,926,683.95</b>	<b>\$4,047,474.65</b>	<b>\$16,254,975.95</b>

7. For eCOB services performed pursuant to Section I.1 Supplemental External Coordination of Benefits (eCOB) for Pharmacy Claims in Attachment A, the State shall pay the following rates per verified cost avoided transaction during the time periods specified below:

- January 1, 2015 – June 30, 2017: \$35.30 per verified cost avoided transaction not to exceed \$1,059,000
- July 1, 2017 – December 31, 2018: \$37.96 per verified cost avoided transaction not to exceed \$759,200

8. Invoices. Unless otherwise specifically provided in Attachment A, Contractor shall issue to the State, monthly in arrears, a separate invoice in U.S. Dollars for the amounts due for work provided in Attachment A provided in the previous month. Each invoice shall include such detail and categories of information as mutually agreed upon by the parties in good faith. Each invoice shall itemize the specific sections of the Statement of Work on which such Charge is based and include calculations used to establish such Charges. Invoices shall be coded and charges segregated as directed by the State to facilitate proper accounting among multiple funding sources and different cost allocations among different parts of the solution. All periodic Charges under this agreement (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month. Invoices must be submitted to: [AHS.DVHAGrantsContracts@vermont.gov](mailto:AHS.DVHAGrantsContracts@vermont.gov)

9. Payment.

- Unless otherwise provided in Attachment A, the undisputed portion of each invoice properly rendered and delivered hereunder shall be due and payable within thirty (30) days following the date such invoice is actually received by the State. Any amounts disputed by the State shall be disputed in accordance with the provisions of Section 10 [Payment Disputes]. All payments shall be made to Contractor by the State in U.S. dollars, unless otherwise specifically agreed upon and set forth in the applicable amendment.
- The Contractor will be compensated solely by the State. Accordingly, Contractor may not seek payment for Services provided to the State under this agreement from any other person or entity. No payments made under this agreement shall be construed as

evidence of the adequate performance of the Services nor shall any payments be construed as acceptance of any unsatisfactory Services by the State.

10. Payment Disputes.

In order to dispute an invoice, or any part thereof, the State must set forth in writing the amount(s) disputed and the specific basis or reason for the dispute, which shall be reasonably detailed and not general or speculative in nature. The State shall forward a Payment Dispute Notice to Contractor on or prior to the due date of the invoice disputed. The State shall not dispute any invoice unless the State believes, in good faith, that the State is being charged for Services which have not been provided or at prices higher than those set forth in this agreement, or that manifest errors in calculation or the like have occurred, or that the State is otherwise being charged for items contrary to work described in the Attachment A of this contract.

Upon compliance with the foregoing provisions, the State may, at its option, withhold payment of the disputed amount(s) of the invoice, and shall remit to Contractor the undisputed amount(s), if any, in a timely manner. Upon receipt of the Payment Dispute Notice, both parties shall make reasonable, diligent, good faith efforts to resolve the dispute as soon as possible in accordance with the dispute resolution procedures set forth below:

- a. General. Unless specifically provided otherwise in this agreement, any dispute or controversy between the parties hereunder shall be resolved as provided in this Section. A dispute over payment will not entitle Contractor to withhold, suspend or decrease its required performance under this Agreement. Contractor shall continue performing its obligations hereunder while the parties are seeking to resolve any dispute in accordance with this Article, unless and until such obligations are terminated or expire in accordance with the provisions of this agreement and the existence of such dispute shall not relieve the Contractor of any of its obligations under this agreement.
- b. Informal Dispute Resolution. The parties may attempt to resolve any dispute or controversy hereunder, informally by submitting the dispute, in writing, managers responsible for the State and the Contractor ("Project Managers") who shall meet in person or by telephone conference call in an effort to resolve the dispute, as often as they deem necessary to gather and analyze any information relevant to the resolution of the dispute, but not less than once every day.
  - i. During the course of attempting to resolve the dispute informally, all reasonable requests for non-privileged information related to the dispute, made by one party to the other, shall be honored; provided, however, in attempting to resolve the dispute, the conduct and activities of the parties, any offers of compromise, all settlement proposals and/or information exchanged shall: (i) be considered information that is confidential and proprietary to each of the parties and therefore, prohibited from disclosure by either of them; (ii) be considered settlement discussions, and shall be inadmissible in any subsequent proceedings; and (iii) shall in no way be construed or deemed to preclude, prohibit or restrict either party, at any time or in any manner, from proceeding to litigation or otherwise exercising any right or remedy available to it under this agreement, at law or in equity.
  - ii. If the Project Managers determine in good faith that resolution through continued



discussions does not appear likely or if the dispute is not resolved within five (5) business days after the dispute has been submitted in writing, either party may notify the other ("Dispute Notice") to proceed with the following escalation and dispute resolution procedures:

- 1) The Project Managers shall gather any additional information relevant to the resolution of the dispute and which may be necessary and appropriate for presentation to the Contractor Account Manager and an executive designated by the State responsible for the Services involved in such dispute.
- 2) The Project Managers shall, within fifteen (15) business days after the Dispute Notice has been given, submit a report to the Contractor Account Director and Executive designated by the State which includes a description of the nature, extent and basis of the dispute, how the dispute arose, the U.S. dollar amount involved in the dispute, any agreed upon statements of fact, a fair, accurate and complete representation of the positions of each of the parties in the dispute, and any other information relevant to the dispute, including information that represents agreed upon stipulations and statements of fact, as well as points of disagreement between the parties. The Report shall include one or more recommendations and alternatives which the parties believe the Contractor Account Manager and designated State Executive should consider. A description of the projected impact of the failure to resolve the dispute promptly and amicably shall also be included in the submission. Each party may include separate statements of impact, recommendations or other information to the extent any of the participants cannot or do not agree on particular items.
- 3) Not later than ten (10) days after the Report in connection with any dispute is submitted to them for review, the Contractor Account Manager and designated State Executive shall meet in an attempt to resolve the dispute. Either party may request additional information, material, advice, and input from individuals and organizations inside or outside the State's and Contractor's organization.
- 4) If the Contractor Account Manager and designated State Executive are unable to resolve the dispute within five (5) business days after the aforesaid meeting date, the parties may mutually agree to refer the dispute to non-binding mediation, which shall be conducted using the rules and procedures promulgated by the American Arbitration Association, applicable to mediation in a location to be agreed upon in Vermont, where the parties agree all such proceedings shall be conducted. Such mediation shall be conducted by a qualified neutral, independent third party mediator, knowledgeable in the subject matter of the dispute and, if the parties cannot agree upon a mediator, each party shall select such a mediator and the two (2) mediators so selected shall mutually agree upon a third and the mediation shall, in that case, be conducted by a panel of the three (3) mediators so selected. Each party shall bear its own expenses and an equal share of the expenses of the mediator(s) and the any related fees.
- 5) If the parties accept and agree to the mediators' recommendations or otherwise reach agreement resolving the dispute, such agreement shall be made in writing and once duly executed, shall be binding on the parties; provided, however, that for the avoidance of any doubt or ambiguity, nothing in this agreement shall be construed as restricting, prohibiting, preventing or otherwise impairing either party from proceeding to litigation, instituting judicial or other proceedings, including a formal claim or legal action, or from pursuing any and all other

**STATE OF VERMONT  
AMENDMENT TO CONTRACT  
GOOLD HEALTH SYSTEMS, INC.  
CHANGE HEALTHCARE PHARMACY SOLUTIONS, INC.**

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AMENDMENT #2**

legal, equitable or contractual remedies available to such party, at any time.

Notwithstanding anything in this agreement to the contrary, the State shall not agree to arbitration and the State shall not waive any right to a trial by jury.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any

such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II,

Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.



- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

**C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(Revised 7/1/16 - End of Standard Provisions)

**ATTACHMENT D  
OTHER PROVISION**

1. The requirements contained in Attachment C, Section 19, are hereby modified by adding the following language at the end of paragraph 19:

**15. Sub-Agreements:** *"Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sales of or reorganization of the Party."*

2. By adding to Attachment C, Section 8 ("Insurance"), the following Professional Liability requirement, which was included in the previous versions of Attachment C under this contract but has been removed from the Attachment C dated 7/1/16 within this Amendment 2:

**Professional Liability:** Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **\$1,000,000** per occurrence, and **\$3,000,000** aggregate.

3. Attachment F, Section 9, subsection titled "Intellectual Property/Work Product Ownership" as an individual part of Section 9, is hereby deleted and replaced with the following language:

**Intellectual Property/Work Product Ownership:**

(i) The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are solely and exclusively developed for the State and used by Contractor hereunder ("**State Information**"), and all other rights, tangible or intangible (collectively, "**State Intellectual Property**"). Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein. Without any additional cost to the State, Contractor shall promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product. Contractor hereby appoints the State, through

its designated signatory, as Contractor's agent and Attorney-in-Fact to execute, deliver and file, as and if necessary, any and all documents necessary to give effect to the provisions of this Section and to take all actions necessary therefore, in Contractor's stead and name, with the same force and effect as if executed, delivered and/or filed by Contractor. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor's hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

**"Work Product"** means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor solely and exclusively for the State. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with this Contract solely and exclusively for the State, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during the Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted a license to any such Contractor Intellectual Property that is incorporated into Work Product during the term of this Agreement. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor's hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

(ii) Upon full payment to Contractor hereunder, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to the Deliverables, except to the extent they include any Contractor Technology; and (ii) grants to State the right to use, for State's internal business purposes, any Contractor Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Technology.

For purposes of these terms (i) "Technology" means works of authorship, materials, information and other intellectual property; (ii) "Contractor Technology" means all Technology created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii) "Deliverables" means all Technology that Contractor or its subcontractors create for delivery to State as a result of the Services.

The Contractor shall not sell or copyright a work product or item produced solely and exclusively for the State under this Contract without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Technology. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor's hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

#### **OTHER TERMS**

4. **Order of Precedence; Contractor Documentation.** The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (e) limit the time within which an action may be brought hereunder.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto regardless of format and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

5. **Term of Contractor's Documents.** Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract.
6. **Indemnification.** The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent a Contractor Document expressly provides for or implies indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and have no force and effect with respect to the State.
7. **Limitation on Disclaimer.** Notwithstanding anything to the contrary set forth in a Contractor Document, the express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.
8. **Limits to Liability.**  
(i) CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, TWO AND A HALF (2.5) TIMES THE FEES PAID OR PAYABLE BY THE STATE OF VERMONT TO CONTRACTOR DURING THE FIRST YEAR OF OPERATIONS (DEFINED HERE AS THE FIRST YEAR THE CONTRACTOR PAYS



CLAIMS OR 2015). THE FOREGOING LIMITATION SHALL NOT APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE FOR COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT; (B) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; OR (C) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT. THE FOREGOING LIMITATION SHALL APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF CONTRACTORS CONFIDENTIALTY OBLIGATIONS TO THE STATE.

THE CONTRACTOR SHALL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY OR LOSS OF ANTICIPATED BUSINESS OR PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

(ii) The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement. The provisions of this Section shall survive the expiration or termination of this Contract.

9. **Records Available for Audit:** The Contractor shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Contractor in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
10. **Trial by Jury.** The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.
11. **Sovereign Immunity.** The Contractor acknowledges that State reserves all immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this contract.
12. **Jurisdiction.** Notwithstanding anything to the contrary in the Contractor's Documents, the Contractor agrees that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

**13. Governing Law.** Notwithstanding anything to the contrary in a Contractor Document, the Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont.

**14. Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Agreement.
- (iii) The Contractor shall comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Agreement.
- (iv) All deliverables shall be free from material errors and shall perform in accordance with the specifications therefor.
- (v) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Agreement and none of the deliverables or other materials or technology provided by the Contractor to the State shall infringe upon or misappropriate the intellectual property rights of any third party.
- (vi) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor shall refund that portion of the fees attributable to each such deficiency.
- (vii) The Contractor has adequate resources to fulfill its obligations under this Agreement.

**15. Virus Protection.** Contractor warrants and represents that any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered shall have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

**16. Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

- 17. Trade Secret, Patent, and Copyright Infringement.** Notwithstanding anything to the contrary in the Contractor's Documents regarding intellectual property and infringement claims, the State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.
- 18. Taxes:** Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate shall be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.
- 19. Limits on Actions Prohibited.** The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations, null and void.
- 20. Contract Default; Remedies.** Notwithstanding anything to the Contrary in the Contractor Documents hereto, if either party breaches a material provision of this Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching party proceeds with reasonable diligence, as determined by the State, to completely cure the breach) either party, at its option, may terminate this Contract immediately by giving written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.
- No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- 21. State Facilities.** During the term of this Contract, the State shall make available to Contractor space in any State facility applicable to the Services, subject to the conditions that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities shall be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- 22. Force Majeure.** The parties' performance under this Contract is subject to acts of God, war or civil commotion, fire, earthquake, or other natural disaster, and unforeseeable acts of any federal, state, or local government or agency thereof, or any other cause beyond the parties' control, making it illegal or impossible to perform their obligations under this Contract. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the

nonperforming party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this Paragraph.

**23. Marketing.** Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.

**24. Confidentiality of Contractor Information.** Notwithstanding anything to the contrary in a Contractor Document, the State shall not disclose information for which a reasonable claim of exemption can be made pursuant to 1 VSA § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall promptly and without unreasonable delay notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it shall not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including attorneys' fees awarded in accordance with 1 V.S.A. § 320, or otherwise incurred by the State, in connection with any action brought by Contractor or a third party in connection with Contractor's attempts to prevent public disclosure of Contractor's information.

**25. Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. In addition to the provisions of this Section, the Party shall execute the HIPAA Business Associate Agreement attached as Attachment E. Before receiving or controlling State Data, the Party shall have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and a copy of such policy has been provided to the State. No State Data shall be stored, accessed from, or transferred to any location outside the United States.

Contractor agrees to keep confidential all information received and collected by Contractor in connection with this contract, including, but not limited to Medicaid eligibility data, rebate information, supplemental rebate information, provider enrollment and claims data, 340B program pricing, protected health information including; but not limited to, (1) diagnosis codes, (2) disease information, (3) progress notes, (4) authorization requests, (5) responses to

authorization requests, all historical data of the previous contractor, DUR Board information including prospective and retrospective analysis, presentations, and recommendations made to the DUR and decisions by the DUR, minutes, and all internal correspondence between Contractor and DVHA and DUR ("State Data") unless otherwise instructed by the State. The Contractor agrees not to publish, reproduce, or otherwise divulge any such State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor shall take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order. The Contractor represents and warrants that it has implemented and it shall maintain during the Term of this Agreement the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures include at a minimum, as applicable: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

- 26. Security Breach Reporting.** The Contractor acknowledges that in the performance of its obligations under this Agreement, it shall be a "data collector" pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in the Business Associate Agreement, in the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could compromise State Data in any format or media, whether encrypted or unencrypted (including PII, PHI or ePHI)(for example, but not limited to, physical trespass on a secure facility, intrusion or hacking or other brute force attack on any State environment, loss/theft of a PC or other portable device (laptop, desktop, tablet, smartphone, removable data storage device), loss/theft of printed materials, failure of security policies, etc.) (collectively, a "Security Breach"), and in accordance with 9 V.S.A. §2435(b)(2), the Contractor shall promptly and without unreasonable delay notify appropriate State personnel of such Security Breach.

The Contractor's report shall identify: (i) the nature of the Security Breach, (ii) the State Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws that require notification in the event of unauthorized release of personally-identifiable information as they may be amended from time to time, including, but not limited to Chapter 62 of Title 9 of the Vermont Statutes, HIPAA and/or HITECH, or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor agrees to assume full responsibility for such notification, and to pay or be liable for the direct reasonable expenses and costs directly arising therefrom (unless the State agrees to assume any such liability) that are, in the State's reasonable determination, required by law; computer forensics and like costs related thereto, including reasonable investigation costs resulting therefrom; and credit monitoring services to affected individuals for a period of time not to exceed one (1) year from the date of the breach in an amount consistent with reasonable market costs for such services.

In addition to any other indemnification obligations in this agreement, the Contractor shall fully indemnify and save harmless the State from any direct costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure by the Contractor, its officers, agents, employees, and subcontractors of such State Data.

- 27. Continuity of Performance.** In the event of a dispute between the Contractor and the State, each party shall continue to perform its obligations under this Agreement during the resolution of such dispute unless and until this Agreement is terminated in accordance with its terms.
- 28. Audit Requirements.** The Contractor shall cause an SSAE 18 Type II audit certification to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.
- 29. Access to State Data:** Within ten (10) business days of a request by State and within sixty (60) days after the effective date of termination of this contract, the Contractor shall make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall make commercially reasonable efforts to return all State Data to State control, or, if such return is infeasible, destroy and certify destruction of



such State Data; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

**30. Ownership of State Data:** The Contractor acknowledges and agrees that all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract shall be the property of State. All content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, to Contractor to facilitate Contractor's performance under the Contract ("State Materials") shall be and remain the sole property of the State and that the Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Materials for its own purposes. In no event shall the Contractor claim any security interest in the State Materials.

**31. Access to State Materials.** Within ten (10) business days of a request by State and within sixty (60) days after the effective date of termination of this contract, Contractor shall make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Materials in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall make commercially reasonable efforts to provide the State with not more than thirty (30) days written notice following any material amendment or modification of such policies. The parties agree that upon termination of this Contract, the Contractor shall, at the choice of the State, either return all the State Materials transferred and the copies thereof to the State or shall destroy all the State Materials and certify to the State that it has done so.

**32. Back-Up Policies:** The Contractor's back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall make commercially reasonable efforts to provide the State with not more than thirty (30) days written notice following any material amendment or modification of such policies.

**33. Data Format; Encryption.** The Contractor agrees to maintain State Data at rest in SQL Server data files using encryption. Further the Contractor agrees to utilize Transparent Data Encryption with a minimum of AES 128 bit encryption strength. The Contractor agrees to maintain State Data in motion using Secure File Transfer Protocols (sFTP). Further the Contractor agrees to utilize DSA or RSA standards with a minimum of 1024 bit encryption. GHS will ensure that any storage and encryption methods comply with all applicable state and federal standards.

STATE OF VERMONT  
AMENDMENT TO CONTRACT  
GOULD HEALTH SYSTEMS, INC.  
CHANGE HEALTHCARE PHARMACY SOLUTIONS, INC.

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CONTRACT# 26324  
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AMENDMENT #2

**34. Contractor Bankruptcy.** Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Materials.

Approval:

Assistant Attorney General:

 e-Signed by James Blum  
on 2017-06-30 18:27:42 GMT

Date:

June 30, 2017

**Attachment E  
Business Associate Agreement**

**THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS DEPARTMENT OF VERMONT HEALTH ACCESS ("COVERED ENTITY") AND CHANGE HEALTHCARE PHARMACY SOLUTIONS, INC. ("BUSINESS ASSOCIATE") AS OF MAY 1, 2014 ("EFFECTIVE DATE"). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT/GRANT TO WHICH IT IS ATTACHED.**

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

"Agent" means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

"Breach" means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

"Business Associate shall have the meaning given in 45 CFR § 160.103.

"Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"Protected Health Information" or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

"Security Incident" means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

"Services" includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

"Subcontractor" means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to

the Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

**5. Safeguards.** Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s)

shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the

contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**15. Return/Destruction of PHI.**

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

**16. Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

**17. Security Rule Obligations.** The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered



Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it

**STATE OF VERMONT**

**AMENDMENT TO CONTRACT**

**GOOLD HEALTH SYSTEMS, INC.**

**CHANGE HEALTHCARE PHARMACY SOLUTIONS, INC.**

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**AMENDMENT #2**

would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

**Attachment F**

**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS**

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

**Inspection and Retention of Records:** In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

**Subcontracting for Medicaid Services:** Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the

authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

**Medicaid Notification of Termination Requirements:** Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

**Encounter Data:** Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

**Federal Medicaid System Security Requirements Compliance:** Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or

benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

**Protected Health Information:** Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

**Substance Abuse Treatment Information:** Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

**Protection of Personal Information:** Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other

personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother's maiden name, etc.

**Other Confidential Consumer Information:** Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

**Data Breaches:** Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

**Abuse Registry.** Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

**Computing and Communication:** Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

**Intellectual Property/Work Product Ownership:** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

**Security and Data Transfers:** Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to

the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

10. **Other Provisions:**

**Environmental Tobacco Smoke.** Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

**2-1-1 Database:** If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org).

**Voter Registration:** When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

**Drug Free Workplace Act:** Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

**Lobbying:** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.